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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,894	02/10/2004	Muncyb Minhazuddin	4366-159	3363
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SHERIDAN ROSS P.C. 1560 BROADWAY, SUITE 1200 DENVER, CO 80202				
EXAMINER				
LAL, ANDREW				
ART UNIT		PAPER NUMBER		
2616				
MAIL DATE		DELIVERY MODE		
09/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/776,894

Applicant(s)

MINHAZUDDIN, MUNEYB

Examiner

ANDREW LAI

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See reasons presented below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Kwang B. Yao/
Supervisory Patent Examiner, Art Unit 2616

Continuation of 3(a): NOTE: Applicant substantially amended various Dependent claims, including claims 3,5,14,15,17,25,27,36,37 and 39. These amendments significantly changed the scope of the originally presented invention and thus require further search.

Continuation of 11: NOTE: Applicant presented arguments against the rejections to Independent claims 1 and 23. Said arguments are fully considered but are not persuasive to put the invention in condition for allowance.

Applicant alleges that the applied arts failed to teach certain limitations in the Independent claims.

Applicant cited (Remarks page 11, the "Shaffer, et al" section) Examiner's admission that Shaffer does not disclose "determining one of the bandwidth utilization, available bandwidth level and QoS metric with respect to a >>particular<< path including a >>particular<< link. For this teaching, the Examiner relies on Graham, et al."

In the following "Graham, et al." section, Applicant basically summarized the invention of Graham without presenting any reasoning whether Graham failed to teach the limitation Shaffer does not disclose. Therefore, the Examiner failed to understand the Applicant's position with regarding to "the references fail to teach or suggest at least the following italicized limitations of independent claims 1 and 23" (Remarks page 10 second paragraph) wherein Applicant included the above limitation in the italicized portion. Examiner would like to point out, as also clearly cited in the Final Rejection, that Graham discloses "when a virtual channel connection is requested, it must be placed in a virtual path, so that the CAS software can determine if there is enough bandwidth remaining in the virtual path to support the new virtual channel connection", col. 2 lines 36-40. Applicant failed to say anything about whether this teaching reads on "determining the bandwidth with respect to a >>particular<< path including a >>particular<< link."

Therefore, Applicant failed to establish a ground for alleged "failed to teach" the limitation of "determining one of the bandwidth utilization, available bandwidth level and QoS metric with respect to a >>particular<< path including a >>particular<< link".

Applicant then continues to another limitation (Remarks page 12, the "Johnson" section) by stating "While admitting that neither Shaffer, et al., nor Graham, et al., disclose comparing bandwidth measure(s) and QoS characteristic(s), the Examiner cited Johnson for this teaching," and further alleging "Johnson teaches away from the claimed invention's use of >>both<< collected QoS characteristics (or network state) and bandwidth measures >>in selecting a proper codec<<".

Examiner respectfully disagrees.

Applicant herein is using a typical "piecemeal" analysis by attacking the applied arts individually while the rejection is based on the proper combination of the arts, as an integrated invention, that is obvious to one skilled in the art. Particularly in this case, Shaffer has already clearly taught >>selecting a proper codec<< based on QoS consideration. There is no need for another reference whatsoever to teach >>selecting a proper codec<< again. All that was missing from Shaffer is such >>selecting<< being based on considering, in addition to QoS, more factors, such as bandwidth. Johnson teaches considering both QoS and bandwidth factors, as clearly discussed in the Final Rejection, for connection admission. It would have been obvious to one skilled in the art to modify Shaffer by considering more factors in >>selecting a proper codec<< for the benefits Johnson readily presented, i.e., better call admission control that guarantees "that appropriate resources are available to ensure that the network can guarantee the bandwidth and the QoS associated with the connection", which was expressly cited in the Final Rejection. Applicant, as one skilled in the art, should appreciate that >>proper codec<< is one type of >>appropriate resource<<, and anything that would help to better manage such >>appropriate resource<<, such as the teachings of Johnson, would certainly motivate one skilled in the art to take.

For all these reasons above, Applicant's arguments clearly failed to support the upfront allegation that "The cited references fail to teach or suggest at least the following italicized limitations of independent claims 1 and 23", and thus failed to put the invention in condition for allowance.